



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 225-2940

Agenda item #6

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

May 14, 2014

MOTION

Made By: Mr. Martin Seconded By: Ms. DeTuncq

Action: Motion Carried, Unanimously

Title: Confidentiality Agreement with the Surface Transportation Board for Use of the Confidential Rail Waybill Sample

WHEREAS, the Surface Transportation Board (STB), the successor agency to the Interstate Commerce Commission, has jurisdiction over railroad rate and service issues and rail restructuring transactions (mergers, line sales/construction, and line abandonments); and

WHEREAS, as part of its railroad activities, the STB has custody of the Confidential Rail Waybill Sample, a database used primarily by federal and state agencies containing rail shipment data (such as origin and destination points, type of commodity, number of cars, tons, revenue, length of haul, participating railroads, and interchange locations); and

WHEREAS, the Office of Intermodal Planning and Investment (OIPI), the Virginia Department of Transportation (VDOT), the Department of Rail and Public Transportation (DRPT), and its consultants have previously used data pertinent to Virginia for such purposes as the study of rail freight traffic for the Statewide Multimodal Freight Study (an ongoing effort), and for corridor truck to rail diversions studies (e.g., I-81); and

WHEREAS, the STB has granted a request for continued access to the 2004 data, as well as access to the 2012 data when it becomes available; and

WHEREAS, in compliance with confidentiality requirements imposed by 49 CFR 1244.9, a new agreement must be executed so that VDOT and DRPT can maintain access to this valuable resource.

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Resolution of the Board
Confidentiality Agreement with the Surface Transportation Board
May 14, 2014

NOW, THEREFORE BE IT RESOLVED, pursuant to authority granted by § 33.1-12 (5) of the *Code of Virginia*, the Board authorizes the Secretary of Transportation, the Director of the Department of Rail and Public Transportation, and the Commissioner of Highways or their designees to execute the necessary agreement with the STB attached hereto with any necessary technical changes thereto, for continued access to the Confidential Rail Waybill Sample, as well as any annual renewals of said agreement.

####

ATTACHMENT A

Surface Transportation Board **Washington, D.C. 20423-0001**

Office of Economics

April 4, 2014

Mr. Aubrey Lane
Secretary of Transportation
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219-2000

In Response Refer To Waybill Request WB936-6

Dear Mr. Lane:

The Surface Transportation Board (STB) has approved the State of Virginia's request of February 7, 2014 for permission to access the 2012 STB Carload Waybill Sample for traffic that originated, terminated or that passed through the State of Virginia. ***This approval becomes effective when the signed agreements from the parties listed below are received by the STB:***

- a) *Mr. Aubrey Lane, Virginia Department of Transportation,*
- b) *Mr. Erik Johnson, Virginia Department of Transportation,*
- c) *J. Kelli Nash, Virginia Department of Transportation,*
- d) *Mr. Michael Todd, Virginia Department of Transportation,*
- e) *Mr. Donald B. Ludlow, AICP, Cambridge Systematics, Inc.,*
- f) *Mr. Jon Schermann, Cambridge Systematics,*
- g) *Mr. Nathan Hutson, Cambridge Systematics,*
- h) *Mr. Daniel F. Beagan, P.E., Cambridge Systematics,*
- i) *Taranum Rima, Cambridge Systematics,*
- j) *Lisa Destro, Cambridge Systematics,*
- k) *Andreas Aeppli, Cambridge Systematics,*
- l) *Steve Owens, IHS Global Insight,*
- m) *Ms. Aleksandra McGuire, IHS Global Insight,*
- n) *Bengt Muten, IHS Global Insight.*

The new expiration date for this agreement is April 30, 2015. Failure to renew an agreement for any year requires you to return or destroy all copies of the data for that year (see item 4 of the agreement).

This letter replaces all previous agreements with the State of Virginia.

The STB releases waybill data to the Department of Transportation, the state rail regulatory agency, or the Office of the Governor of each state requesting use of the Carload Waybill Sample. It is expected that the agency that signs for the sample will control use of the sample for that state, sharing data with other state agencies, and controlling the release of waybill data to ensure that the conditions of the confidentiality agreement are enforced. You may want to ask other state agencies to sign an agreement with your office concurring with the conditions of this agreement when waybill data are shared with them. Such sharing does not require STB approval as long as the State of Virginia can assure the conditions of this agreement are followed. However, sharing of data with state colleges and universities is restricted to cases where the university is working on a specific project for a state agency. General academic research is not covered and waybill data for such use should be requested by the university directly from the STB.

When using the data the parties must recognize several aspects which limit drawing general conclusions from any potential findings: 1) The waybill data are sample data, and 2) the data are based on terminating shipments from relatively large carriers. Only those railroads with more than 4,500 annual terminating carloads were included in the sample. This limited sampling of very small railroads may have a substantial effect on studies covering small areas served predominately by a non-sampled railroad.

Because contract information is privileged, the revenue field of the waybill sample may not represent the true revenue for contract movements. Railroads are permitted, under certain conditions, to replace the contract revenue with a calculated "masked" figure. The masked revenue figures are typically larger than actual contract revenues, but need not be. Further, there are often end-of-year adjustments provided for in contract rates, typically calling for rebates or discounts once minimum volume commitments are met, that may not always be included in the masked or actual waybill revenue figures. You should not use revenue data from the Carload Waybill Sample in any type of comparison may lead to wrong or misleading results.

The rules for release of waybill data [Ex Parte No. 385 (Sub-No. 2)] are codified at 49 CFR 1244.9. The waybill data contain confidential shipper and railroad data. As a result, waybill data are commercially sensitive and have the potential for competitive harm to shippers and railroads. Therefore, the following agreement must be signed before any waybill data can be used.

Your signature acknowledges the state's agreement to comply with the following:

1. The State shall make the information contained in the Carload Waybill Sample available only to state employees or state contractors working on the particular project or study requiring the waybill data. For the purpose of releasing waybill data, members of state and local emergency planning committees are considered state employees. However, you should release to these committees only hazardous material waybill data pertaining to: number of carloads, tons, type of equipment used, and the generic class or category of hazardous material passing over the rail lines in the communities under study.
2. The State will not release any data to the public until the STB has had the opportunity to review the data to ensure its confidentiality.
3. The State will refer any requests for waybill data and accompanying documentation to the STB for processing and will so inform the requesting party of such referral to the Surface Transportation Board.
4. The State must sign an agreement annually with the STB agreeing to these restrictions. **If an annual agreement is not signed, all waybill materials (including all copies) obtained under this agreement will be returned to the STB or the state must certify that the data has been destroyed.**

After you sign and return this agreement, please contact Mr. Decker (202-245-0348) to make the necessary arrangements to have a copy of the data sent to you. The Surface Transportation Board will provide the state the data on a R-CD ROM. The STB requests that you pay processing and mailing cost in the amount of \$850.00.

Sincerely,



for
William F. Huneke
Director & Chief Economist

I have read and understand the conditions for release of the waybill data. The State of Virginia agrees to comply fully with these conditions and the provisions of this confidential agreement. Thirty days before the agreement expires, the State of Virginia will request an extension of this agreement. If no extension is requested, then we will return or destroy all waybill data and certify that the state has no copies of the data. I understand that failure to request an extension, to return the data or destroy the data may prevent the State of Virginia from receiving any future waybill data from the STB (see item 4). I have the authority to sign this agreement for the State of Virginia.

By: The State of Virginia

Signature

Mr. Aubrey Layne, Secretary of Transportation
Name - Please Print

Title

Date

For STB use only:

Signed Agreement Returned: WB 936-6 _____

Expiration Date: 4/30/15

I have read and understand the conditions for release of the waybill data. The State of Virginia agrees to comply fully with these conditions and the provisions of this confidential agreement. Thirty days before the agreement expires, the State of Virginia will request an extension of this agreement. If no extension is requested, then we will return or destroy all waybill data and certify that the state has no copies of the data. I understand that failure to request an extension, to return the data or destroy the data may prevent the State of Virginia from receiving any future waybill data from the STB (see item 4). I have the authority to sign this agreement for the State of Virginia.

By: The State of Virginia

Signature

Mr. Michael Todd
Name - Please Print

Title

Date

For STB use only:

Signed Agreement Returned: WB 936-6 _____

Expiration Date: 4/30/15

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By: The State of Virginia

Signature
Mr. Erik Johnson
Name - Please Print

Title

Date

For STB use only:

Signed Agreement Returned: WB 936-6 _____

Expiration Date: 4/30/15

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By: The State of Virginia

Signature
J. Kelli Nash
Name - Please Print

Title

Date

For STB use only:
Signed Agreement Returned: WB 936-6 _____ Expiration Date: 4/30/15

Each approved company or individual must sign a copy this agreement.

I have read and understand the conditions for release of the waybill data. I agree to comply fully with these conditions and the provisions of this confidential agreement. Thirty days before the agreement expires, I will request an extension of this agreement. If no extension is requested, then all waybill data will be returned or destroyed. When this agreement expires, I will certify that I nor my company has any copies of data or reports developed from the Carload Waybill Sample except as may be permitted by other confidentiality agreements I have signed with the STB (see item 4 of agreement). I understand that failure to request an extension, return the data, or destroy the data may prevent me or my company receiving any future waybill data from the STB. I have the authority to sign this agreement for the company.

Company

Cambridge Systematics, Inc.

By:

Signature

Donald B. Ludlow, AICP

Name – Please Print

Title

Date

For STB use only:

Signed Agreement Returned: _____

Expiration Date: 04/30/15

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Company

Cambridge Systematics, Inc.

By:

Signature

Jon Schermann

Name – Please Print

Title

Date

For STB use only:

Signed Agreement Returned: _____

Expiration Date: 04/30/15

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Company

Cambridge Systematics, Inc.

By:

Signature

Nathan Hutson
Name – Please Print

Title

Date

For STB use only:

Signed Agreement Returned: _____

Expiration Date: 04/30/15

Each approved company or individual must sign a copy this agreement.

I have read and understand the conditions for release of the waybill data. I agree to comply fully with these conditions and the provisions of this confidential agreement. Thirty days before the agreement expires, I will request an extension of this agreement. If no extension is requested, then all waybill data will be returned or destroyed. When this agreement expires, I will certify that I nor my company has any copies of data or reports developed from the Carload Waybill Sample except as may be permitted by other confidentiality agreements I have signed with the STB (see item 4 of agreement). I understand that failure to request an extension, return the data, or destroy the data may prevent me or my company receiving any future waybill data from the STB. I have the authority to sign this agreement for the company.

Company

Cambridge Systematics, Inc.

By:

Signature

Daniel F. Beagan, P.E.

Name – Please Print

Title

Date

For STB use only:

Signed Agreement Returned: _____

Expiration Date: 04/30/15

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Company

Cambridge Systematics, Inc.

By:

Signature

Taranum Rima

Name – Please Print

Title

Date

For STB use only:

Signed Agreement Returned: _____ Expiration Date: 04/30/15

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Company

Cambridge Systematics, Inc.

By:

Signature

Lisa Destro

Name – Please Print

Title

Date

For STB use only:

Signed Agreement Returned: _____

Expiration Date: 04/30/15

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Company

Cambridge Systematics, Inc.

By:

Signature

Andreas Aepli
Name -- Please Print

Title

Date

For STB use only:

Signed Agreement Returned: _____ Expiration Date: 04/30/15

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Company

IHS Global Insight

By:

Signature

Steve Owens

Name – Please Print

Title

Date

For STB use only:

Signed Agreement Returned: _____ Expiration Date: 04/30/15

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Company

IHS Global Insight

By:

Signature

Aleksandra McGuire

Name – Please Print

Title

Date

For STB use only:

Signed Agreement Returned: _____

Expiration Date: 04/30/15

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Company

IHS Global Insight

By:

Signature

Bengt Muten _____
Name – Please Print

Title

Date

For STB use only:

Signed Agreement Returned: _____ Expiration Date: 04/30/15



Surface Transportation Board

395 E St., S.W.

Washington, DC 20423-0001

Attn: Scott Decker

PAYMENT FORM

Please indicate method of payment for the amount of \$850.00

- Check (Check or money order to be made payable to SURFACE TRANSPORTATION BOARD)
- Money Order
- Credit Card
- VISA MasterCard DiscoverCard American Express

Name on Credit Card _____

Credit Card No. _____

Security Code (3 digit on back of card) _____

Expiration Date _____

Signature _____

(My signature indicates my desire to (Date)
have this transaction charged to the
credit card listed above.)

Cardholder's Name _____

Cardholder's Billing Address _____

NOTE: If payment is to be credited to an established STB account or statement of charges, please indicate the number assigned to your account/invoice. _____

If payment is to be credited for a docket filing, please indicate the docket number. _____

For office use only: Docket No. WB936-6
Description of services provided: Waybill request